

Regular Session, 2009

HOUSE BILL NO. 733

BY REPRESENTATIVES LEGER AND BROSSETT

TAX CREDITS: Authorizes a tax credit for certain "green job industries"

## 1 AN ACT

2 To enact R.S. 47:6035, relative to tax credits; to authorize a tax credit for certain "green job  
3 industries"; to provide for certain definitions; to provide for the application for,  
4 certification of, and the administration of the tax credit; to provide for the maximum  
5 amount of the credit that may be issued; to provide for certain requirements and  
6 limitations; to provide for the recapture and recovery of the credit under certain  
7 circumstances; to provide for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6035 is hereby enacted to read as follows:

10 §6035. Tax credit for "green job industries"

11 A. Definitions. For the purposes of this Section, the following words shall  
12 have the following definitions unless the context clearly indicates otherwise:

13 (1) "Base investment" means expenditures for the construction, repair, or  
14 renovation of state-certified green projects for which a credit is granted in this  
15 Section, or investments made by a company or financier which are for such  
16 expenditures.

17 (2) "Company" or "financier" means any individual, firm, partnership, limited  
18 liability company, joint venture, association, corporation, estate, trust, or other entity,  
19 group, or combination acting as a unit, and the plural as well as the singular number.

1           (3) "Expended in the state" means expenditures for tangible property to be  
2           used within the state; and in the case of services, means expenditures for services  
3           performed within the state; and in the case of intangible property, means the  
4           acquisition of permits, licenses, or other rights related to state-certified green projects  
5           used within the state.

6           (4) "Green job industry" or "green job industries" shall mean energy  
7           efficiency and renewable energy industries, energy-efficient building, construction,  
8           and retrofit industries, the renewable electric power industry, the energy efficient and  
9           advanced drive train vehicle industry, the biofuels industry, the deconstruction and  
10           materials use industries, the energy efficiency assessment industry serving the  
11           residential, commercial, or industrial sectors, and manufacturers that produce  
12           sustainable products using environmentally sustainable processes and materials.

13           (5) "Payroll" means all salary, wages, and other compensation, including  
14           related benefits for services performed in Louisiana.

15           (6) "Resident" or "resident of Louisiana" means a natural person and, for the  
16           purpose of determining eligibility for the tax incentives provided by this Section, a  
17           person who qualifies for any of the following reasons:

18           (a) The person is domiciled in the state of Louisiana.

19           (b) The person maintains a permanent place of abode within the state and  
20           spends in the aggregate more than six months of each year within the state.

21           (c) The person pays taxes to the state on the amount of money paid to such  
22           person for which a credit is sought pursuant to this Section.

23           (d) A company owned or controlled by such a person and which lends the  
24           services of such a person for a state-certified green project shall also be deemed a  
25           resident if such company is organized or authorized to do business in the state and  
26           such company pays taxes to the state on the amount of money paid to such company  
27           for such services of such person.

28           (7) "State-certified green project" means a capital infrastructure project in  
29           the state directly related to green jobs industries as defined in this Section, and

1 movable and immovable property and equipment related thereto, or any other facility  
2 which supports and is a necessary component of such facility, and any expenditures  
3 in the state related to the construction, repair, or renovation of such project, which  
4 are certified, verified, and approved as provided for in this Section.

5 B. Income tax credits for state-certified green projects:

6 (1) There is hereby authorized a base investment tax credit for certified,  
7 verified, and approved expenditures in the state for the construction, repair, or  
8 renovation of a state-certified green project, or for investments made by a company  
9 or a financier in such project which are, in turn, expended for such construction,  
10 repair, or renovation, not to exceed one million dollars per state-certified green  
11 project. No more than five million dollars in tax credits under this Section shall be  
12 granted for state-certified green projects per year.

13 (a) If all or a portion of a project is a facility which may be used for other  
14 purposes not directly related to the green jobs industry, then the project shall only be  
15 approved if a determination is made that the multiple-use facility will support and  
16 will be necessary to secure support industries for the green job industry and the  
17 applicant provides sufficient contractual assurances the facility will be used for  
18 support industries or as a component thereof, for the useful life of the facility.

19 (b) No tax credits shall be earned on multiple-use facilities until the facility  
20 directly used in the green job industries is complete.

21 (2)(a) Tax credits for state-certified green projects shall be earned only as  
22 follows:

23 (i) Twenty-five percent of the total base investment provided for in the initial  
24 certification of a project pursuant to Subsection (D) of this Section shall be certified,  
25 verified, and approved as expended before any credits may be earned.

26 (ii) No tax credit shall be allowed for expenditures made for any state-  
27 certified green project two years after its initial certification, unless fifty percent of  
28 total base investment provided for in the initial certification of the project has been  
29 expended prior to that time. The expenditures may be finally certified at a later date.

1            (iii) The initial certification may require the tax credits to be taken or  
2            transferred in the tax period in which the credit is earned or the tax credit may be  
3            structured in the initial certification of the project to provide that only a portion of  
4            the tax credit be taken over the course of two or more tax years.

5            (b) The base investment credit for state-certified green projects shall be for  
6            the following amounts:

7            (i) If the total base investment is greater than one hundred thousand dollars  
8            and less than or equal to three hundred thousand dollars, a company shall be allowed  
9            a tax credit of ten percent of the base investment made by that company.

10           (ii) If the total base investment is greater than three hundred thousand dollars  
11           and less than or equal to one million dollars, a company shall be allowed a tax credit  
12           of twenty percent of the base investment made by that company.

13           (iii) If the total base investment is greater than one million dollars, a  
14           company shall be allowed a tax credit of twenty-five percent of the base investment  
15           made by that company.

16           (c) To the extent that base investment is expended on payroll for Louisiana  
17           residents employed in connection with the construction of a state-certified green  
18           project, a company shall be allowed an additional tax credit of ten percent of the  
19           payroll; however, if the amount paid to any one person exceeds one million dollars,  
20           the additional credit shall not include any amount paid to that person that exceeds  
21           one million dollars.

22           (d) To the extent that base investment is expended on payroll for Louisiana  
23           residents employed in connection with a state-certified green project, who are  
24           graduates of an institution within the Louisiana Community and Technical College  
25           System, each investor shall be allowed an additional tax credit of one percent of  
26           such payroll.

27           (3)(a) The tax credits shall be earned each calendar year to the extent the  
28           Department of Economic Development verifies in writing that expenditures  
29           qualifying for a credit pursuant to this Section have been expended for the calendar

1 year in accordance with the estimates of such expenditures for the calendar year set  
2 forth in the certification of the project.

3 (b) In addition, a state-certified green project which receives tax credits  
4 pursuant to the provisions of this Chapter shall not be eligible to receive the rebates  
5 provided for in R.S. 51:2451 through 2461 in connection with the activity for which  
6 the tax credits were received.

7 (4) Tax credits associated with a state-certified green project shall never  
8 exceed the total base investment in the project.

9 (5) The granting of credits under this Section shall be on a first-come, first-  
10 served basis. If the total amount of credits applied for in any particular year exceeds  
11 the aggregate amount of tax credits allowed for that year, the excess shall be treated  
12 as having been applied for on the first day of the subsequent year.

13 C.(1) The credit shall be allowed against individual or corporate income tax  
14 of the companies or financiers of the project in accordance with their share of the  
15 credit as provided for in the application for certification for the project. A company  
16 or financier may on a one-time basis, transfer the credit, or any refund of an  
17 overpayment, to an individual or other entity including without limitation a bank or  
18 other lender, provided that the transfer shall not be effective until receipt by the  
19 Department of Revenue of written notice of such transfer. The credit shall be  
20 allowed for the taxable period in which expenditures eligible for a credit are  
21 expended. Any excess of the credit over the income tax liability against which the  
22 credit may be applied shall constitute an overpayment, as defined in R.S.  
23 47:1621(A), and the secretary shall make a refund of such overpayment from the  
24 current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as  
25 amended. The right to a refund of any such overpayment shall not be subject to the  
26 requirements of R.S. 47:1621(B).

27 (2) Application of the credit.

28 (a) Individuals, estates, and trusts shall claim their share of any credit on  
29 their income tax return.

1           **(b) Entities not taxed as corporations shall claim their share of any credit on**  
2           **the returns of the partners or members.**

3           **(c) Corporate partners or members shall claim their share of any credit on**  
4           **their corporation income tax returns.**

5           **(d) Individual partners or members shall claim their share of any credit on**  
6           **their individual income tax returns.**

7           **(e) Partners or members that are estates or trusts shall claim their share of**  
8           **any credit on their fiduciary income tax returns.**

9           **D. Certification and administration. (1) The secretary of the Department of**  
10          **Economic Development, the commissioner of administration, and the office of the**  
11          **governor shall determine which state-certified green projects shall be certified**  
12          **pursuant to this Section through the adoption and promulgation of rules by the**  
13          **department, in consultation with the commissioner and the office of the governor.**  
14          **The rules shall also provide for all of the following:**

15               **(a) The minimum criteria for such certification.**

16               **(b) The manner in which the department shall decide which expenditures for**  
17               **such projects will qualify for the credits provided for in this Section.**

18               **(c) An appeals process in the event that an application for or the certification**  
19               **of a project, or an expenditure related to such project, is denied.**

20               **(2) In addition, these rules shall be approved by the House Committee on**  
21               **Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.**

22               **(3) State certification shall not be granted to a project by any person or**  
23               **company, or financed by any person or company, or any company or financier**  
24               **owned, affiliated, or controlled, in whole or in part, by any company or person,**  
25               **which is in default on a loan made by the state or a loan guaranteed by the state, or**  
26               **which has ever declared bankruptcy under which an obligation of the company or**  
27               **person to pay or repay public funds or monies was discharged as a part of such**  
28               **bankruptcy.**

1           (4) When determining which projects qualify for certification, the  
2           Department of Economic Development, the commissioner of administration, and the  
3           office of the governor shall take the following factors into consideration:

4           (a) The impact of the state-certified green project on the employment of  
5           Louisiana residents.

6           (b) The extent to which students in Louisiana colleges, universities, and  
7           vocational-technical schools will have an opportunity to work in a facility which  
8           manufactures green products.

9           (c) The impact of the project on the overall economy of the state including  
10          the manner in which available federal and state incentives will be utilized in the  
11          financing or operation of the project.

12          (5) Upon approval by the Department of Economic Development, the  
13          commissioner of administration, and the office of the governor, the department shall  
14          initially certify a project as a state-certified green project and send notice of such  
15          certification to the applicant and to the secretary of the Department of Revenue. The  
16          initial certification shall include all of the following:

17          (a) The total base investment to be expended on the state-certified green  
18          project.

19          (b) The companies or financiers to whom the credits shall be allocated.

20          (c) The estimated amounts of the credits to be allocated to each.

21          (d) When the tax credits may be taken or transferred.

22          (e) A unique identifying number for the state-certified green project.

23          (6) An applicant applying for the credits shall be required to reimburse the  
24          Department of Economic Development for any audits required in relation to granting  
25          the certification or tax credits.

26          E. Application. An applicant for the tax credit shall submit an application  
27          for initial certification to the Department of Economic Development that includes the  
28          following information:

29          (1) The application for state-certified green project shall include:

1           (2) A preliminary budget including estimated Louisiana payroll, estimated  
2           base investment, including the manner in which available federal and state incentives  
3           will be utilized in the financing or operation of the project.

4           (3) A general description of the project.

5           (4) Estimated dates for start and completion of the construction of the  
6           project.

7           (5) The companies and/or financiers to whom the credits shall be allocated  
8           and the estimated amounts of the credits to be allocated to each.

9           (6) Additional information may be requested if deemed necessary by the  
10          Louisiana Department of Economic Development.

11          F.(1) Recapture of credits. If the office of the governor, the Department of  
12          Economic Development, or the Department of Revenue find that funds for which a  
13          taxpayer received credits according to this Section were not expended for  
14          expenditures qualifying for a credit as provided in this Section, then the taxpayer's  
15          state income tax for such taxable period shall be increased by such amount necessary  
16          for the recapture of credit provided by this Section.

17          (2)(a) Recovery of credits by Department of Revenue. Credits granted to a  
18          taxpayer, but later disallowed, may be recovered by the secretary of the Department  
19          of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated  
20          within three years from December thirty-first of the year in which the credit was  
21          taken.

22          (b) The only interest that may be assessed and collected on recovered credits  
23          is interest at a rate three percentage points above the rate provided in R.S.  
24          9:3500(B)(1), which shall be computed from the original date of the return on which  
25          the credit was taken.

26          (3) The provisions of this Subsection are in addition to and shall not limit the  
27          authority of the secretary of the Department of Revenue to assess or to collect under  
28          any other provision of law.



1           G. The division of administration and the Department of Economic  
2           Development shall prepare, with input from the Legislative Fiscal Office, a written  
3           report to be submitted to the Senate Committee on Revenue and Fiscal Affairs and  
4           the House Committee on Ways and Means no less than sixty days prior to the start  
5           of the Regular Session of the Legislature in 2010, and every second year thereafter.  
6           The report shall include the overall impact of the tax credits, the amount of the tax  
7           credits issued, the number of net new jobs created, the amount of Louisiana payroll  
8           created, the economic impact of the tax credits, and any other factors that describe  
9           the impact of the program.

10           H. Within one hundred eighty days of the effective date of this Act the  
11           secretary of the Department of Revenue shall establish rules and regulations to  
12           provide for the implementation of the provisions of this Act. Such rules shall  
13           provide for the taxable periods for which the tax credit for "green job industries"  
14           shall apply, including an end date for the availability and application of the tax credit  
15           due to the exhaustion of federal funding.

16           Section 2. The provisions of this Act shall become effective if, as, and when the  
17 Department of Natural Resources receives a letter of award from the United States  
18 Department of Energy evidencing the obligation of funding in the amount of at least five  
19 million dollars per year, for a minimum of three years. Such obligation may be established  
20 through the United States Department of Energy Energy Efficiency and Conservation Block  
21 Grant program, the Advanced Battery Manufacturing Grants, or any other federal program  
22 which provides funding related to support of green jobs industries. The secretary of the  
23 Department of Natural Resources shall notify the secretary of state upon receipt of the letter.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Leger

HB No. 733

**Abstract:** Authorizes a base investment tax credit for expenditures for the construction, repair, or renovation of a state-certified green projects, not to exceed \$1 million per state-certified green project.

Proposed law defines a "base investment" as expenditures for the construction, repair, or renovation of state-certified green projects, or investments made by a company or financier which are for such expenditures.

Proposed law defines "green job industry" or "green job industries" as energy efficiency and renewable energy industries, energy-efficient building, construction, and retrofit industries, the renewable electric power industry, the energy efficient and advanced drive train vehicle industry, the biofuels industry, the deconstruction and materials use industries, the energy efficiency assessment industry serving the residential, commercial, or industrial sectors, and manufacturers that produce sustainable products using environmentally sustainable processes and materials.

Proposed law defines "state-certified green project" as a capital infrastructure project in the state directly related to green jobs industries, and movable and immovable property and equipment related to it, or any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair, or renovation of such project, which are certified, verified, and approved as required in proposed law.

Proposed law authorizes a base investment tax credit for certified, verified, and approved expenditures in the state for the construction, repair, or renovation of a state-certified green project, or for investments made by a company or a financier in such project which are, in turn, expended for such construction, repair, or renovation, not to exceed \$1 million per state-certified green project. No more than \$5 million dollars in tax credits shall be granted for state-certified green projects per year.

Proposed law provides that if all or a portion of the project is a facility which may be used for other purposes not directly related to the green jobs industry, the project shall only be approved if a determination is made that the multiple-use facility will support and will be necessary to secure support industries for the green job industry. Prohibits tax credits from being earned on multiple-use facilities until the facility directly used in the green job industries is complete.

Proposed law provides that the base investment credit for state-certified green projects shall be for the following amounts:

- (1) If the total base investment is greater than \$100,000 and less than or equal to \$300,000, a company shall be allowed a tax credit of 10% of the base investment.
- (2) If the total base investment is greater than \$300,000 and less than or equal to \$1 million, a company shall be allowed a tax credit of 20% of the base investment.
- (3) If the total base investment is greater than \$1 million, a company shall be allowed a tax credit of 25% of the base investment.

Proposed law provides for certain limitations on earning the tax credit for base investments.

Proposed law provides that to the extent that base investment is expended on payroll for La. residents employed in connection with the construction of a state-certified green project, a company shall be allowed an additional tax credit of 10% of the payroll. Proposed law further provides for an additional tax credit of 1% of the payroll for La. residents who are graduates of an institution within the La. Community and Technical College System.

Proposed law prohibits tax credits for state-certified green projects to exceed the total base investment in the project. Further provides that credits shall be granted on a first-come, first-served basis. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

Proposed law provides for the certification, administration, application, recapture, and recovery of the tax credits.

Proposed law requires a written report to be submitted to the House and Senate committees no less than 60 days prior to the start of the 2010 R.S. which shall include the overall impact of the tax credits, the amount of the tax credits issued, the number of net new jobs created, the amount of La. payroll created, the economic impact of the tax credits, and any other factors that describe the impact of the program.

Proposed law requires the secretary of the Dept. of Revenue to promulgate rules and regulations for the implementation of the provisions of proposed law. Such rules shall provide for the taxable periods for which the credit shall be available, as well as an end date for availability of the credit.

Effective upon receipt of a letter from the U.S. Department of Energy awarding La. an obligation of funding of at least \$5 million per year, for a minimum of three years, through the U.S. Dept. of Energy Energy Efficiency and Conservation Block Grant program, the Advanced Battery Manufacturing Grants, or any other federal program which provides funding related to support of green jobs industries.

(Adds R.S. 47:6035)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Changes the maximum per project credit from \$10 million to \$1 million.
2. Changes the maximum amount of tax credits which may be granted in one year from \$60 million to \$5 million.
3. Adds requirement for the secretary of the Dept. of Revenue to promulgate rules for the implementation of the provisions of proposed law, to include the taxable periods for which the credit shall be available, as well as an end date for availability of the credit.
4. Changes effectiveness of the bill from "governor's signature" to the receipt of a letter from the U.S. Dept. of Energy awarding La. a grant of at least \$5 million per year, for a minimum of three years for funding related to support of green jobs industries.